

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 878 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DISTRICT PANCHAYAT, JAMNAGAR

Versus

BHANVAD SOCIAL & SPORTS CLUB, BHANVAD.

Appearance:

MR PV HATHI for the Petitioner

None present for the Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision: 30/12/99

C.A.V.JUDGMENT

1. The District Panchayat, Jamnagar by this Civil Revision Application under section 115 of the Civil Procedure Code, 1908 challenges the order dated 21.7.1994 of the District Judge, Jamnagar in Civil Misc. Application No.28/93 wherein the application filed by the petitioner under section 5 of the Limitation Act, 1963 for condonation of delay in filing of the appeal against

the judgment and decree of the Civil Judge (Junior Division), Bhanvad in Regular Civil Suit No.8/88 dated 8.10.1992 has been dismissed.

2. The facts of the case are that, the plaintiff respondent No.1 filed the Regular Civil Suit No.8/88 in the court of Civil Judge (Junior Division), Bhanvad against the defendant - petitioner and the defendant respondent No.2 challenging therein the decision of the defendant - petitioner taken under section 294 of the Gujarat Panchayats Act suspending and/or postponing the execution and implementation of the resolution passed by the Nagar Panchayat, Bhanvad granting the land to the plaintiff - respondent No.1. The plaintiff - respondent No.1 is a trust carrying social activities and also having sports club. This suit has been contested by the defendant - petitioner. Mr.T.S.Mediwala was its advocate. The suit was decreed by the trial court on 8.10.1992. It is not in dispute that the advocate of the defendant - petitioner obtained attested copy of the judgment of the trial court on 15.10.1992. Attested copy of the decree was also obtained by him on 5.11.1992. It is also not in dispute that the advocate sent both the aforesaid attested copies to the defendant - petitioner. Certified copy of the judgment and decree was applied on 12.2.1993 which was made available to the learned counsel on 17.2.1993 and the appeal alongwith the application were came to be filed in the court on 31.3.1992. So the delay of 144 days is there in filing of the appeal. Under the impugned order this application was rejected by the lower appellate court. Hence, this Civil Revision Application.

3. Learned counsel for the petitioner contended that the learned court below proceeded on certain assumptions and inferences which are not warranted, and further in support of which there was no material on the record. Carrying this contention further Mr.Hathi learned counsel for the petitioner submitted that the order impugned in this Civil Revision Application of the court below proceeded on inferences and surprises which are, first that the District Panchayat has got the permanent advocate on their record. Second, they have Special Branch to look after legal matters. Third, the District Panchayat could have filed the appeal with the attested copy of the judgment and decree. Fourth, the District Panchayat could have reserved its rights to produce the certified copy and fifth, there was an afterthought in order to shirk responsibilities. In his submission, certified copy of the judgment and decree is to be filed alongwith the appeal, otherwise the same is not

maintainable.

4. Relying on two decisions of the Apex Court in the cases of State of Haryana Vs. Chandra Mani and others, JT 1996(3) SC 371 and Special Tehsildar, Land Acquisition, Kerala, 1996 (10) SCC 634, Mr. Hathi contended that, while considering the application seeking condonation of delay in filing of the appeal, the approach of the court should have been pragmatic but not pendants in the case where the appeal is filed by the Government. Here, the District Panchayat has filed the appeal beyond the limitation. While considering the application for condonation of delay strict standard of proof should not have been applied.

5. None has put appearance for the respondents.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

7. Limitation Act does not make any distinction between the State and the citizen. The Honourable Supreme Court in many of the cases including the case on which reliance has been placed by the learned counsel for the petitioner held that, while considering the application for condonation of delay made by the State Government in filing of the appeal, the approach of the court should have been liberal. There should not have been adoption of strict standard of proof. It is also held that the expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The court has further stated that the factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. What the court stated that the court should decide the matters on merits unless the case is hopelessly without merit.

8. In the matter of the State or the District Panchayat, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the represents collective cause of the community. Decisions are taken by officers/agencies proverbially at a low pace and

encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible.

9. It is not out of context to state that this constitutional and State authorities are also being managed, controlled and headed by the bureaucraties of the State Government. I have been given out that in the State almost in all the District Panchayats, District Development Officer is there. If, that is so, then functioning of this District Panchayat cannot be different then, how the State functions at Gandhinagar. So whatsoever the Apex Court said for the State Governments and given the guidelines to the High Courts and courts subordinate to it to apply considering the application filed by it for condonation of delay in filing of the appeal are equally applicable or be made applicable to in the case of the District Panchayat also. The appeal brought by the State or the District Panchayat is lost for such default, that is, barred by limitation stands in same footing. So the Apex Court has laid down that the courts to decide the matters on merit unless the case is hopelessly without merit. However, liberal view may be taken or is to be taken in such matters, but it is obligatory on the part of the petitioner herein to make out the case for condonation of delay. It is true, in the matter where the application for condonation of delay filed by the District Panchayat or the State Government an inordinate approach has to be made and liberal view is to be taken, but some reasonable cause has to be shown for the delay and further *prima facie* the court should have been satisfied that on merits, the petitioner has good case in its favour.

10. In the case in hand, the petitioner has not argued on the merits of the matter before the lower court as well as before this court. Mr. Hathi, learned counsel for the petitioner during the course of the arguments has not touched the merits of the matter and has only confined to the submission that as it is the appeal filed by the District Panchayat, condonation of delay should have been a rule.

11. It is not the case where the court below has proceeded only on assumptions and inferences. The application filed by the petitioner under section 5 of the Limitation Act is there on the record of the Civil Revision Application and if we go by the contents

thereof, I find that no explanation has been furnished for this inordinate delay of 144 days in filing of the appeal. If we go by the contents of the application, it gives out as if in the case where the District Panchayat filed the application under section 5 of the Limitation Act, it has to be accepted by the court. The delay may necessarily to be explained. There must be some explanation for this inordinate delay. In this case, I cannot do better than but to reproduce the application of the petitioner in this judgment which reads.:

- "1. The applicant is a statutory institution and has its office in Jamnagar City.
- 2. The opponent No.2 is also a body under the administrative control of the applicant while the opponent No.1 is the Trust.
- 3. The opponent No.1 had prayed for injunction after filing the suit against the applicant and opponent No.2 in the Bhanvad Court and after hearing the suit where the prayer was made that the opponent No.1 should not be removed from the suit land and the Civil Judge (J.D.), Bhanvad has finally decided the said suit on 8.10.92.
- 4. On being aggrieved by the order of the lower court the applicant has filed an appeal which appeal is beyond time of 144 days.
- 5. The office of the applicant is at Jamnagar while the suit was conducted in the Bhanvad Court. Further, the intimation of the disposal of the suit was received from Bhanvad by the advocate of the applicant and the time was consumed in taking the necessary decision for filing the appeal thereafter.
- 6. The said time was consumed after obtaining a copy of the order from the lower court and after the receipt of the same, the necessary decision for filing the appeal was required after deliberation.
- 7. The applicant body had received the attested copy of the order and thereafter the necessary steps were taken to obtain certified copy from the applicant's advocate at Bhanvad and, therefore, a large time has elapsed for that reason.

8. There were sufficient reasons for delay in taking administrative steps while discharging other duties of public interest and because of heavy burden and in obtaining the copy and to take final decision thereon, and therefore, the said delay may kindly be condoned.

9. In the circumstances, it is prayed;

to admit the appeal after condoning the delay of 144 days caused in filing the appeal against the judgment dated 8.10.92 passed by the learned Civil Judge (J.D.), Bhanvad in the Reg.Civil Suit No.8/88."

Reading of the same gives out that for this inordinate delay even there is no whisper of any cause much less than any sufficient cause. The author of this application has not given out the details on which date attested copy was received from the advocate in the office and thereafter how the matter has been dealt with. In this case, attested copy of the judgment and decree was received by the advocate well within the period of limitation and in case the petitioner was really intended and desired of filing of an appeal, the same could have been filed in time. How this application is concocted and manufactured for the sake of seeking condonation of delay is clearly borne out from the reading of paragraphs 5 and 6 thereof. From paragraph 5, I find that intimation for decision of the suit has been received from the advocate and attested copy of the judgment could have also been received. Then, reference has been made that the time has been consumed in obtaining the certified copy of the order from the lower court and after receipt thereof in taking necessary decision for filing of the appeal. In paragraph 7, mention has been made for receipt of the attested copy of the order and then steps were taken to obtain certified copy from the petitioner's advocate at Bhanvad. The delay is there prior to taking of certified copy of the judgment and decree and after obtaining attested copy thereto. Certified copy was obtained by the advocate on 17.2.1993 and the appeal has been filed on 31.3.1992. The appeal though has to be filed at Jamnagar but after receipt of the attested copy the decision could have been taken for filing of the appeal and even also appeal could have been filed with the attested copy. Even, if the certified copy is to be filed with appeal then it was made available to the petitioner on 17.2.1993 and thereafter more than 1 month and 13 days time has been taken in filing of the appeal. On the record of this Civil Revision Application, learned counsel for the petitioner

has produced the copy of the letter dated 1.2.1993 of Bharat Sukhvvariya & Associates. From this letter, I find that the decision has been taken by the District Panchayat on or before 1.2.1993 for filing of an appeal. The advocate has also been instructed to file an appeal though on which date the advocate was instructed to file an appeal, is not mentioned. The advocate felt it necessary to have certified copy to be filed with the appeal, this copy was made available on 17.2.1993 and no explanation has been furnished whatsoever by the petitioner to take such a long time to file an appeal.

12. In the facts of this case, I find that to patch their own negligence, carelessness and to avoid possible departmental inquiry the officers of the District Panchayat have done all this and rightly the court has stated it to be afterthought. The petitioner has no case on merits which clearly borne out from the fact that it has not presented before the lower or before this court. The good case may not be permitted to be suffered on this technicality, more so, where it is a matter of public interest, but delay in filing of the appeal cannot be condoned merely on asking or as a routine and unless the authority applied for condonation of delay in filing of the appeal has a strong case on merits. Leaving apart all technicalities in this case, even before this court or the - lower court no attempt has been made to satisfy that the petitioner has a strong case on merits. This goes to show that the petitioner and its advocate are satisfied that on merits they have no case. The court below have not committed any error in rejecting the application filed by the petitioner for condonation of delay in filing of the appeal. It is not a fit case where interference of this court is called for with the impugned order under section 115 of the Civil Procedure Code. It is the discretion of the lower court and where discretion has properly, reasonably and in consonance with the legal principles been exercised, no interference can be made by the court with the impugned order in its

be said to be perverse.

13. As a result of the aforesaid discussions, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. As nobody has put appearance for the respondents, no order as to costs.

(S.K.Keshote,J.)
(pathan)

